

**TESTIMONY OF
MICHAEL LOVE
F/V ATLANTIC STAR
AMERICAN PELAGIC FISHING CO, L.P.**

**BEFORE THE
SUBCOMMITTEE ON OCEANS AND FISHERIES
OF THE
COMMERCE, SCIENCE AND TRANSPORTATION COMMITTEE
UNITED STATES SENATE**

MARCH 26, 1998

Thank you Madam Chairwoman and members of the Subcommittee. My name is Michael Love and I am the general manager of the *Atlantic Star*. Our boat needs no introduction to you, Senator Snowe. We appreciate the significant time that you and your staff have spent over the past year in meeting with us to learn about our project. We believe there is a productive role for our boat in the Americanization of the Atlantic herring and mackerel fisheries and appreciate the opportunity to participate in this hearing on S. 1221, "The American Fisheries Act" and S. 1192, the "North Atlantic Fisheries Resource Conservation Act."

Summary of Position on S. 1221 and S. 1192

We see no need for federal legislation. Congress has already taken action with respect to the Atlantic herring and mackerel fisheries with the enactment of Public Law 105-119, which has accomplished the principal objectives of S.1192. This action has given the industry and the fishery managers time to address the orderly development of expansion of both fisheries. We believe that the Regional Fishery Management Councils, not Congress, are in the best position to deal with these issues.

Similarly, we see no need for S. 1221. In particular, we are opposed to legislating size limitations at the federal level as S.1221 would do. Issues relating to the right vessel size for any particular fishery are better left to the Councils. If vessel ownership standards are to be established they should be done at the federal level, however we see no reason for change in the current law. In fact, we are concerned that the proposed new ownership standards in S.1221 will have unintended consequences that will hamper the development of export markets for American fisheries products.

1. The *Atlantic Star* project

I am a third generation New England fisherman, a graduate of the Maine Maritime Academy and a resident of North Yarmouth, Maine. I have owned my own groundfish boats on the East Coast, have skippered larger fishing vessels in the North Pacific, and am

an experienced manager of East Coast mackerel boats. The well-recognized problems with the groundfish resource, and the increased encouragement to look to alternative opportunities in the herring and mackerel fisheries, led me to focus on the larger vessels needed to achieve the economies of scale to profitably enter these fisheries. This led to my involvement with other U.S. fishermen in this project.

a. The Company

Our company, American Pelagic Fishing Co., LP, is a U.S. citizen controlled partnership meeting the most stringent citizenship standards for fishing industry vessels under the U.S. documentation laws.¹ American Pelagic is a U.S. partnership of two U.S. companies, wholly owned by U.S. citizens, and a company (with a 49% minority limited partnership interest) owned by an experienced Dutch company owned by two fishermen families. I want to emphasize that this project was conceived, planned and developed entirely by U.S. fishermen. It was only *after* the vessel was acquired, the rulings and permits obtained, the conversion plans completed, and preliminary financing in place, that we brought our foreign partners into the project. They are involved to help gain appropriate access to foreign markets. The addition of this expertise also assisted the company in its ability to obtain better financing terms for the project.

b. The Vessel

The *Atlantic Star* was built in the mid-1980's in Tacoma, Washington. Originally intended to be an at-sea incineration ship, the vessel was never completed and was idle for several years until converted to a fish processor in the 1990's. Overbuilt because of its originally intended cargo, the vessel is constructed of unusually heavy steel, has a complete double hull, is in class and meets the highest Coast Guard standards making it one of the safest and most environmentally sound vessels in the entire U.S. flag fleet.

In addressing the issues surrounding larger vessels it is important to recognize that the *Atlantic Star* is a freezer trawler, not a factory trawler. The boat only freezes the fish that it catches, it does not otherwise process them. There is no waste and there is no meal plant on board. The fish that are taken out of the net are the same that are taken out of the hold at the end of the fishing trip. The only difference is that at the end of the process the fish is frozen. Outfitting of the vessel for these fisheries involved the installation of refrigerated sea water (RSW) tanks and appropriate freezing capability. The vessel's hull and superstructure were left intact in the process. The work was done overseas where the

¹ The company complies with the stringent "controlling interest" citizenship standard that was established by the Anti-Reflagging Act. The vessel does not rely on the Ownership Grandfather of the Anti-Reflagging Act in order to operate in the U.S. fisheries.

² Because of the foreign rebuilding issues raised in S. 1221, it is important to note that the work performed on the *Atlantic Star* was insufficient for the vessel to be considered "rebuilt" overseas. The overseas work that was performed on the hull and superstructure was well below the regulatory threshold that would trigger a rebuild determination (a vessel is necessarily "rebuilt" if the work involves 10% or more of the vessel's steel weight; the work on the *Atlantic Star* was less than 7.5%). See 46 CFR 67.177. The

equipment was manufactured and where the relevant expertise exists.²

The vessel is really very similar to the existing fleet of larger East Coast vessels in its basic layout and function. There is only one significant difference: the *Atlantic Star* brings a larger cold storage facility with it when it goes to the fishing grounds. This enables the vessel to fish farther out than other vessels, and allows it to freeze the fish more quickly. Interestingly, what the *Atlantic Star's* size does not do, however, is allow it to catch more fish. In fact, because its harvest is limited by its ability to freeze what it catches, it is capable of catching and freezing about *half of what a tank boat meeting the S.1221 thresholds* of 165 feet, 750 gross tons and 3000 horsepower could do.

c. Present Status

The *Atlantic Star* project cost \$40 million of which \$37 million is for the vessel and related refitting with an additional \$3 million for start-up costs. This investment was made in reliance on the appropriate government permits and necessary agency rulings as well as compliance with all known laws, regulations and policies. The vessel was scheduled to commence operations by the end of the year and was delivered from the yard last November. Just days later President Clinton signed Public Law 105-119, the Commerce Justice State and Judiciary Appropriations legislation, Section 616 of which revoked our fishing permits and prevented us from operating in the U.S. fisheries.

Because we are unable to engage in any fishing operations or to operate as a mothership freezing mackerel and herring caught by other U.S. fishermen we have not brought the vessel back to the United States. We have been able to find limited employment for the vessel in the Baltic Sea where she is presently operating as a mothership under charter to a German company in connection with a research project for the German government. I have been on board the boat for the past several weeks and have just left her in order to appear at today's hearing. I am happy to report that the vessel has lived up to our expectations in terms of her functioning and ability to transfer codends and to freeze the product quickly. This of course is not a long-term solution to our current predicament. The vessel can not be economically sustained with this kind of operation and we continue to lose money. We are anxious to work with the Regional Councils to find a productive role for our vessel in the United States where she belongs.

2. The Atlantic herring and mackerel resource and the opportunity for development that the *Atlantic Star* presents

The National Marine Fisheries Service (NMFS) has concluded that the North Atlantic herring and mackerel stocks are abundant and healthy and will easily support additional capacity. These are not fisheries that are under duress.

Rebuilding Grandfather under the Anti-Reflagging Act is irrelevant with respect to the *Atlantic Star*.

a. The mackerel and herring resources are strong and healthy

The spawning stock biomass (SSB) for Atlantic Mackerel is currently estimated to be 2.1 million metric tons (mt) which has led the Stock Assessment Review Committee (SARC) to conclude that “The Northwest Atlantic mackerel stock is currently at a *high level of biomass and is underexploited*.” (emphasis added) 21st Northeast Regional Stock Assessment Workshop (21st SAW); Stock Assessment review Committee, Consensus Summary of Assessments (June 1996) at 71. The Allowable Biological Catch (ABC) is 382,000 mt and the last reported domestic landings of mackerel were only 15,712 mt.

In fact, when the latest 1998 proposed specifications for Atlantic Mackerel were published, NMFS observed: “*U.S. Atlantic mackerel stock abundance remains high*.” 62 Fed. Reg. 63064, 63065 (Nov. 26, 1997) (emphasis added).

Like mackerel, the Atlantic herring resource is also abundant. The spawning stock biomass is estimated at 2.2 million mt (SARC-21, at pp 76-78. This data has led SARC to conclude: “The Atlantic Coast stock complex of Atlantic herring is increasing in size and is presently *extremely under-utilized*.” SARC-21 at p. 78 (emphasis added). The maximum sustainable yield of this resource is indicated to be 317,000mt with short term catch potentials of over 500,000mt. The last reported U.S. landings were 87,648 mt.

b. The economic development opportunity

The challenge for the industry is how best to develop this opportunity so as to maximize the benefits to the United States. The Councils and NMFS are encouraging expansion of these fisheries. In order to enhance the international market opportunities for domestic mackerel the Mid-Atlantic Council kept the Total Allowable Level of Foreign Fishing (TALFF) at zero, notwithstanding a U.S. harvest far short of the ABC. Joint Venture allocations were reduced this year for the same reason. Citing the declines in North Sea mackerel stock the Council believes there are increased opportunities for U.S. producers to expand sales and predicts that market expansion for U.S. Atlantic mackerel is likely to continue, especially as groundfish harvesters redirect their efforts to Atlantic mackerel. Concerning the 1998 specifications NMFS said: “*Atlantic mackerel is considered a prime candidate for innovation in harvesting, processing, and market-ing*.” 62 Fed. Reg. at 63065 (Nov. 26, 1997). We believe the *Atlantic Star* can play a part in helping the U.S. industry develop opportunities in expanding export markets.

In a 1993 study the International Trade Commission accurately identified some of the barriers to the U.S. industry’s competing effectively on the world market, finding that the U.S. was adversely affected by “relatively high costs of production and transportation; low product quality relative to the quality demanded in high value markets; and lack of marketing experience”.³ The findings were supported by detailed cost comparisons between American and larger European boats, concluding that both production and

³ ITC Investigation No. 332-333, “Mackerel: Competitiveness of the U.S. Industry in Domestic and Foreign Markets” (June 1993) at pp 5-19 (“ITC Study”).

transportation costs were *double* that for Americans *because of the smaller vessel size*, and the smaller quantities transported and thus recommending *the use of larger vessels*:

Competitive disadvantages in costs, product quality, and marketing can be overcome, as the success of the industry's competitors in Western Europe suggests. For example, the use of larger harvesting vessels would reduce unit costs because of economies of scale, such as those enjoyed by the large vessels of the Dutch and Norwegian fleets.

ITC Study at 5-20 (emphasis added). Throughout the development of the relevant fishery management plan the Mid-Atlantic Council has recognized these problems, frequently citing the ITC study.

What the *Atlantic Star* has to offer is a suitable U.S. built platform to make Americans competitive on the world market. Right now, the *Atlantic Star* is the only U.S. vessel available to expand this market. The *Atlantic Star* has been precluded from operating even as a mothership, and yet there are three foreign flag vessels operating as motherships in the herring and mackerel fisheries as we speak. While American fishermen are getting paid for their catch, none of the value added in the processing is benefiting Americans. These foreign vessels do not employ Americans, are not subject to federal income taxes and take the economic benefits overseas. As a practical matter the Magnuson-Stevens Act priorities have been reversed with these foreign vessels enjoying a preference over our U.S. flag vessel.

Right now our vessel is prevented from competing with these foreign flag vessels operating in our waters. Under these circumstances we can see no reason why the *Atlantic Star* should not be able to operate in these fisheries as well. The advantages are many. First the vessel will create 80 new on-board jobs for U.S. citizens. It will also create many more jobs on shore with supplying the vessel, the loading and offloading as well as the direct expenditures of the vessel itself, including crewshare, payroll, fuel supplies, etc. which are estimated at \$10 million annually.

The *Atlantic Star* finally offers the opportunity to Americanize the herring and mackerel fisheries in a manner that fishery managers have long identified as the way to become competitive on the world market. Among the advantages are:

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- *The vessel produces frozen fish for human consumption.* Most of the current U.S. herring production, for example, is for bait not food products.
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- *Product quality is increased, therefore demanding a higher price in the market, and establishing a quality reputation for American products.* Because the fish can be frozen immediately at-sea the quality is superior.
- *Coastal stocks are not over fished.* The vessel has the ability to harvest the stocks further offshore and in a safer manner than smaller shoreside catcher vessels, which tend to

target and threaten closer-in coastal stocks. We are willing to operate the vessel outside of the Gulf of Maine in accordance with the draft herring fishery management plan.

- *Technologically advanced equipment allows for utilization of all fish caught.* The *Atlantic Star* has on board the most advanced equipment for targeting and grading the desired size of fish for different markets. This keeps discards to a minimum. Moreover, the vessel's size allows for NMFS observers.
- *Economies of scale in production and transportation of the product.* It is well established that one of the principal disadvantages of the current U.S. fleet is that the individual vessels are too small to harvest the fish in the quantities necessary to be competitive on the world market. These economies extend to the transportation costs, which are *cut in half* by shipping the product in bulk freezer vessels rather than individual freezer containers.

3. The North Atlantic Fisheries Resource Conservation Act – S.1192

Introduced last fall, this legislation called for a time out to allow the New England and Mid-Atlantic Councils to address issues related to the orderly development of these fisheries. The bill temporarily barred vessels greater than 165 feet or more than 3,000 horsepower from harvesting herring and mackerel pending Council action, while allowing mothership operations of vessels exceeding these thresholds. The bill also called for implementation of final plan amendments by September 30, 1998.

The principal features of S. 1192 were adopted by Congress in an amendment to appropriations legislation that was enacted in November as Section 616 of Public Law 105-119. Although we did not support this legislation at the time, we of course have accepted the Congressional mandate. We regret that that the final action went beyond the scope of S.1192 to bar the use of our vessel as a mothership and even for experimental fishing, but are hopeful that by the end of the current ban and together with the Councils we will be able to find a productive use for our vessel in the United States. Because the moratorium objectives of S.1192 have effectively been achieved, we see no reason to enact the bill at this time.

4. The American Fisheries Act – S. 1221

We understand that the principal motivation for the introduction of S. 1221 comes from the West coast and deals in large measure with the grandfather provisions of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987. While those provisions are not relevant to our vessel, the bill does contain sections that are significant for the *Atlantic Star*. In particular Section 301(b) dealing with "New England Fisheries" and Section 102 which imposes a new standard of ownership. Other provisions, although not directly affecting our vessel, do not in our view reflect sound policy for fisheries management in general and we would urge that you not adopt them. We believe the Councils have the tools and are in the best position to make decisions with respect to the

appropriate vessel size for a given fishery and to consider the economic allocation issues that are at the heart of S.1221. In short, we do not see the need for additional federal legislation in this area.

a. “New England Fisheries” – Section 301(b)

The section of most direct relevance to our vessel is Section 301(b) which would prevent vessels greater than 165 feet, of more than 750 gross tons and more than 3,000 shaft horsepower from harvesting Atlantic mackerel or herring unless participation of such vessels is specifically allowed in fishery management plans developed and implemented under the Magnuson-Stevens Act. It also directs the revocation of any permits presently issued to such vessels. Because our vessel is the only vessel intended for these fisheries that exceeds these thresholds, and because Section 616 of Public Law 105-119 parallels Section 301(b) in key respects and has already caused our permits to be revoked, there is simply no need for further legislation.

We believe that the Council process is the logical way to deal with the issues surrounding vessel size and we are committed to working with the New England and Mid-Atlantic Councils to find the best opportunity to employ our vessel in the herring and mackerel fisheries. We are fully prepared to explore the range of options that make sense for the rational management of the fisheries and their development for the benefit of the overall industry, as long as we are able to make a reasonable economic return on our investment. These options include restricting the vessel from operating in the Gulf of Maine, providing an at-sea, over-the-side market for appropriate U.S. harvesting vessels and making the *Atlantic Star* available for research and experimental fishing. For the reasons outlined above, we think our project has much to offer and we are anxious to work with the Councils toward that end.

b. Standard of Ownership – Section 102

The current “controlling interest” U.S. citizen ownership standard is a completely appropriate standard that needs no change. It is based on the very stringent language of the Shipping Act of 1916 which is aimed at keeping militarily useful assets under U.S. control. It has been the benchmark for U.S. citizen control for national defense purposes ever since. If it is a strong enough citizenship standard to satisfy the Department of Defense that our militarily essential assets are under U.S. control, we think it is a strong enough standard to keep our fishery resources under U.S. control as well.

Moreover, we are concerned about the apparent new mandate for the Maritime Administration in Section 103(a)(2) to scrutinize “rigorously” a wide range of commercial arrangements involving non-citizens, including fish purchase arrangements. The clear implication of this provision is that some of the specified commercial arrangements could result in an impermissible transfer of ownership or control to a non-citizen. This will have a very chilling effect on the ability of the U.S. industry to develop foreign export markets for our products. For fisheries like herring and mackerel where there is virtually no

domestic market, foreign purchasers of the fish are essential to the development of the fishery. Yet if routine purchase contracts can jeopardize a vessel's ability to operate in the fishery simply because the customer is a non-citizen, American fishermen are going to have even a harder time in developing markets. It is a very troubling precedent. If it were applied literally, joint venture fishermen who delivered all of their catch to foreign processing vessels *would lose their own U.S. citizenship for vessel documentation purposes* and be unable to continue fishing! We see nothing to be gained by these new citizenship standards and are concerned that it will only make U.S. fishermen less competitive in the world marketplace.

c. Vessel size limitation – Section 301

We also find the new nationwide length, horsepower and tonnage limitations to be inappropriate and unnecessary. To begin with, there is simply no explanation as to how these particular thresholds were developed, not even for a single fishery, let alone across the board for every fishery in the nation. These thresholds first surfaced in the discussion of the *Atlantic Star* and we have yet to see *any* explanation as to why they make sense from a management perspective, a safety perspective, or otherwise. While vessel size may have some relationship to fishing power, it is a poor measure. As noted earlier, because the *Atlantic Star* is constrained by how fast it can freeze the product it takes on board, it can handle *half the fish* on a daily basis that a tank boat designed to meet the proposed thresholds could do. A “one size fits all” standard simply makes no sense as a management measure given the variety of the various fisheries throughout the country.

There also is ample evidence that smaller vessels are not as safe as larger vessels, particularly in offshore fisheries. I have fished both Georges Bank and the Bering Sea in the middle of winter and I can tell you that I would always chose the larger vessel over the smaller one, particularly one that is in class and of the quality and seaworthiness of the *Atlantic Star*.

The economics of a particular fishery also have an impact on the vessel size. As noted above, after studying the mackerel fishery the International Trade Commission concluded that larger vessels were the only way Americans could successfully compete on the world market. In other fisheries, size limitations might be worth considering. We see no reason to adopt national size thresholds, particularly ones as arbitrary as these, when we have a system of fishery management councils that are knowledgeable about the individual fisheries and are in a position to sift through the evidence and make a rational decision as to what vessel size may be an appropriate standard for a given fishery.

If Congress is to adopt a national size threshold, it should at the very least determine some rational basis for the size thresholds. At a minimum there should be a comprehensive study by the National Marine Fisheries Service, the National Science Foundation or some other third party as to what the impact on the fisheries would be of the suggested size limits, and whether there are more appropriate size thresholds that should be considered.

d. Takings

There is at least one more troubling aspect with this legislation which I must mention. Although I am not a lawyer, I understand that the Fifth Amendment to the Constitution requires that anytime government takes property it must pay compensation. I can tell you that being prevented from operating our boat after making a \$40 million investment in reliance on existing statutes, regulations and specific rulings and permits certainly seems like a taking to us. This has been a very costly experience for our company and it is a cost we would have not experienced except for the government having taken away our permits.

We think as a matter of policy the revocation of permits and the termination of fishery endorsements – particularly for behavior that was perfectly legal at the time it was undertaken – has no place in fishery management legislation, or any other legislation, not only because it is Constitutionally suspect, but because it is simply unfair to those who must suffer the consequences. To the extent that S.1221 works this hardship on any vessel we encourage you to oppose its passage.

Conclusion

The *Atlantic Star* is a first class, U.S. built, U.S. flag, U.S. owned and U.S. crewed vessel that has much to offer in the development of our herring and mackerel fisheries. While we recognize the concerns that were voiced when our vessel project was first announced on the East coast, we believe that when the facts are properly understood there will be a role for the vessel in the mackerel and herring fisheries. We remain committed to work through the Council process toward that end. In the meantime, we believe that more federal legislation is both unnecessary and undesirable and should not be enacted.